

**Letter of Findings: 01-20120448**  
**Individual Income Tax**  
**For the 2009 and 2010 Tax Years**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE**

**I. Individual Income Tax—Federal Taxable Income.**

**Authority:** IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of adjusted gross income tax resulting from adjustments made to its federal taxable income.

**STATEMENT OF FACTS**

Taxpayers are a married couple filing joint individual income tax returns for the years at issue. The Indiana Department of Revenue ("Department") made adjustments to Taxpayers' federal 1120S income for 2009 and 2010 to net profit reported from a convenience store/gas station subchapter S corporation they operate that has three locations in Indiana. Taxpayers are the shareholders of the S corporation.

The Department conducted a review of Taxpayers' business records. After the investigation, the Department determined that Taxpayers owed additional individual income tax and assessed tax and interest for the 2009 and 2010 tax years. The Department determined that Taxpayers had under-reported their federal taxable income. Taxpayers protested the assessments. An administrative hearing was conducted on the protest, and this Letter of Findings results. Further facts will be supplied as required.

**I. Individual Income Tax—Federal Taxable Income.**

**DISCUSSION**

As a threshold matter, all tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department conducted an audit of Taxpayers' business records and tax returns. After reviewing the Taxpayers' business documents, the Department determined that Taxpayers had under-reported their gross income resulting in Taxpayers under-reporting their federal taxable income.

According to the Department's audit investigation report, the Department found discrepancies in the information that Taxpayers provided to substantiate the amount of gross sales that were reported on their federal returns:

A comparison of Taxpayers' gross receipts reported on line 1 of the federal income tax return to the gross receipts entered on the monthly summaries revealed an understatement of gross receipts on the federal income tax returns. All sales of fuel and of the convenience stores were scheduled by location and a comparison made to federal receipts. When this information was presented to Taxpayers, the Department's auditor was informed that Taxpayers only reported taxable sales from the sales tax return on the federal income tax return. Taxpayers also stated that they did not include all of the costs of goods sold on the federal income tax returns.

The Department's investigation report explained its method of adjusting Taxpayers' income tax:

[Taxpayers] record[] [] gallons sold by regular, premium or diesel on daily sales sheets recorded on computer work sheets. Total sales from fuel and convenience store sales along with lottery tickets sales are also

entered on these sheets. These work sheets for all months in the audit period were available for review. [Taxpayers] [do] not keep a general ledger nor was a trial balance or cash disbursement journal made available for review. The auditor had cost of goods sold invoices for all of the fuel purchases for all locations, but only other cost of goods sold invoices for the 002 and 003 locations.

To give [Taxpayers] additional expense for cost of goods sold the auditor used gasoline station averages for a S-Corp taken from statistics on Bizstats.com for average percentage of cost of sales to total sales which was 91.68[percent]. Since all records were not made available to the auditor a reasonable amount of additional expenses were allowed.

Based on the above, the Department's audit determined that Taxpayers had under-reported their federal taxable income and made the appropriate adjustments. Taxpayers agreed that their federal taxable income was under-reported but disagreed by how much.

After the audit and prior to the hearing, Taxpayers, through their representative, presented additional documentation to support their protest that they had additional business expenses that were not taken into account in the audit's final numbers. While Taxpayers made some attempt to organize the information presented in support of the protest, the documentation was not organized in such a fashion that was understandable to the hearing officer conducting the hearing. Prior to the hearing Taxpayers were alerted by the hearing officer that the documentation presented needed to be better organized. After some delay, several attempts were made after the hearing to reach the Taxpayers' representative in order to clarify this documentation, to no avail.

At the hearing, Taxpayers' representative explained that the additional expenses fell into three categories: rental expenses that were not reported, repair and maintenance expenses that were not reported, and certain other business expenses. Taxpayers documented their claims regarding the rental expenses by presenting a statement averring that certain rental fees were paid to a related entity. Taxpayers' say-so is not sufficient documentation of this claim. As for the repair and maintenance expenses and the other business expenses claimed, Taxpayers presented mostly purchase orders, quotes, and proposals stating anticipated expenditures, but did not show that these amounts were actually paid nor that these expenditures were not already reviewed and accounted for by the audit. What invoices were presented also were not accounted for in an audit trail.

In order to support their protest that certain expenses were not captured by the Department's audit, Taxpayers had to show that the expenses they were now claiming were above and beyond what was already accounted for in the audit. In other words, Taxpayers needed to reconcile the amounts already claimed on their federal returns with the amounts they were now claiming should have been accounted for. Taxpayers' documentation falls short of doing that.

When asked at the hearing if Taxpayers had filed amended federal returns for the years at issue to claim these additional expenses, Taxpayers stated that they had been told by the auditor not to do so. However, the Department's investigation report of the business ends with the following statement:

The taxpayer is in agreement with the audit results. The taxpayer stated they may have additional expenses to claim than originally reported on the 1120S, in this case they can file an amended State and Federal Income tax return when they have all their records together.

Taxpayer has the obligation to prepare a careful, methodical, and detailed factual presentation of the evidence sufficient to refute the conclusions contained within the Department's investigation report. In order to meet its burden, the taxpayer must "walk" the Hearing Officer through each element of the taxpayer's proffered evidence. The documentation Taxpayers presented did not present an audit trail that show expenses actually incurred.

The Department's audit was more than fair in its assessment of additional income tax in using an average of over 90 percent cost of sales to total sales in calculating Taxpayers' cost of goods sold. Taxpayers' documentation does not meet their burden to substantiate their protest.

## FINDING

Taxpayers' protest is respectfully denied.

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